

AMENDED IN SENATE APRIL 11, 2005

SENATE BILL

No. 708

Introduced by Senator Speier

February 22, 2005

An act to add Part 5.7 (commencing with Section 17800) to Division 9 of the Welfare and Institutions Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

SB 708, as amended, Speier. Drug discount program: conditions of participation.

Existing law establishes the federal Medicaid program, administered by each state, California's version of which is the Medi-Cal program. The Medi-Cal program, which is administered by the State Department of Health Services, provides qualified low-income persons with health care services.

Existing federal law requires the United States Secretary of Health and Human Services to enter into an agreement with each manufacturer of covered drugs that are not subject to a rebate under an agreement between the state Medicaid program and the manufacturer under which the amount required to be paid to the manufacturer for covered drugs, with certain exceptions, purchased by a covered entity, as defined, does not exceed an amount equal to the average manufacturer price for the drug under the federal Medicaid program in the preceding calendar quarter, reduced by the rebate received pursuant to the Medicaid agreement.

This bill would require the State Department of Health Services to develop a standard contract for private nonprofit hospitals whereby a hospital ~~agrees that elects to participate in the drug discount program established under federal law may agree to provide medical care to indigent patients, as a condition of participation in the drug discount~~

~~program established under federal law pursuant to a memorandum of understanding with the department. The bill would require a hospital entering into such an agreement to increase by an unspecified amount the percentage of its operating expenses that goes to charity care by the end of the 3rd year that the hospital is a party to the memorandum of understanding.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Part 5.7 (commencing with Section 17800) is added to Division 9 of the Welfare and Institutions Code, to read:

PART 5.7. HEALTH CARE FOR LOW-INCOME PERSONS
NOT COVERED BY THE MEDICARE PROGRAM OR THE
MEDI-CAL PROGRAM

17800. Any not-for-profit hospital that elects to participate in the drug discount program established under Section 340B of the Public Health Service Act ~~shall~~ *may* enter into an agreement with the State Department of Health Services ~~pursuant for that purpose, which shall be subject to this part.~~

17801. ~~The State Department of Health Services shall develop a standard contract for use by any private not-for-profit hospital that desires to participate in the drug discount program provided for in Section 340B of the Public Health Service Act (42 U.S.C. Sec. 256b), which shall be in the following form: a standard contract for use in any agreement entered into pursuant to Section 17800, which shall be in the following form:~~

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE STATE DEPARTMENT
OF HEALTH SERVICES AND**

THIS MEMORANDUM OF UNDERSTANDING is made this ____ day of ____, ____ by and between the undersigned representatives of the State Department of Health Services (DHS) and _____,

1 a nonprofit corporation organized and existing under the laws of
2 the State of California.

3
4 **RECITALS:**

5
6 **WHEREAS,** _____ is a California not-for-profit hospital
7 that provides a disproportionate share of health care services
8 to the Medicare population in addition to supporting many
9 programs that benefit the indigent, uninsured, or
10 underinsured population in California;

11 **WHEREAS,** _____ desires to participate in the drug
12 discount program established under Section 340B of the
13 Public Health Service Act (the 340B Program);

14 **WHEREAS,** In order to participate in the 340B
15 Program _____ must enter into an agreement with a unit of the
16 state government pursuant to which _____ commits to provide
17 health care services to low income individuals who are not
18 entitled to Medicare or Medicaid benefits at no
19 reimbursement or considerably less than full reimbursement
20 from these patients;

21 **WHEREAS,** _____ desires to make such a formal
22 commitment to DHS;

23 **WHEREAS,** DHS agrees to accept such commitments
24 on behalf of the citizens of California;

25 **NOW, THEREFORE,** In consideration of the mutual
26 agreements and covenants contained therein and for other
27 good and valuable consideration, the receipt and sufficiency
28 of which hereby are acknowledged, it is mutually agreed and
29 covenanted, under seal, by and between the parties to this
30 agreement, as follows:

31
32 **1. Commitment of _____ to Provide**
33 **Indigent Care.**
34

35 During the term of this MOU, _____ agrees to continue
36 its historic commitment to the provision of health care to
37 indigent, uninsured, and underinsured residents of _____.
38 In 2006, this commitment totaled approximately \$ _____.
39 in lost charges. Pursuant to this commitment, it is the
40 intention of _____ that indigent care provided during the

1 term of this MOU will range generally between 10
2 percent lower or higher than the above number. In any
3 event, _____ will assume that all patients will receive
4 necessary care, as required by law, regardless of ability
5 to pay.
6

7 **2. Acceptance and Acknowledgments of DHS.**
8

9 (a) DHS accepts the commitment of _____ set forth
10 ~~above;~~ *above;*

11 (b) DHS hereby acknowledges that the health care
12 services provided by _____ hereunder are in the public
13 interest and are being provided to individuals who are
14 not entitled to benefits under Title XVIII, or eligible for
15 assistance under any ~~State~~ *state* plan pursuant to Title
16 XIX, of the Social Security Act; and

17 (c) DHS acknowledges that _____ is providing these
18 services at no reimbursement or considerably less than
19 full reimbursement from the patients.

20 **3. Representations of _____.**

21 _____ represents that as of the date
22 hereof:

23 (a) _____ constitutes a corporation duly organized and
24 validly existing in good standing under the laws of the
25 State of _____ with the corporate power and authority to
26 enter into and perform its obligations under this MOU;
27 and

28 (b) _____ is a tax-exempt corporation under Section
29 501(c)(3) of the Internal Revenue Code of the United
30 States, as amended and under applicable laws of the
31 State of _____.

32 **4. Terms and Termination.** The term of this MOU
33 shall commence on the date first above written and shall
34 continue until terminated by either party upon not less than
35 60 days' prior written notice to the other.

36 **5. Notice.** All notices required or permitted to be given
37 under this MOU shall be deemed given when delivered by
38 hand or sent by registered or certified mail, return receipt
39 requested, addressed as follows:
40

Sent to: (Hospital Representative)_____
Attention:_____

6. Governing Law. This MOU shall be governed by
and construed in accordance with the laws of the State of
California.

IN WITNESS WHEREOF, _____ and
the DHS have executed this agreement as of the day and year
first written above by their duly authorized representatives.

WITNESS:

DHS

Name: _____
Title: _____

*17802. A hospital may terminate any contract entered into
between that hospital and the State Department of Health
Services pursuant to Section 17800 within one year after the date
the contract was made.*

*17803. A hospital that has entered into a contract pursuant to
Section 17800 shall, as a condition of continuing participation in
the program provided under this part, increase the percentage of
its operating expenses that goes to charity care, as reported to
the Office of Statewide Health Planning and Development, by
____ percent by the end of the third year that the hospital is a
party to the contract.*

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